

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Gregory Scott
Edward A. Garvey
Joel Jacobs
Marshall Johnson
LeRoy Koppendrayer

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of Minnesota Cellular Corporation's Petition for Designation as an Eligible Telecommunications Carrier

ISSUE DATE: February 10, 2000

DOCKET NO. P-5695/M-98-1285

In the Matter of an Investigation into the Merits of Disaggregating the Study Area of Frontier Communications of Minnesota, Inc.

DOCKET NO. P-405/CI-00-79

ORDER ACTING ON PETITIONS FOR RECONSIDERATION AND OPENING INVESTIGATION

PROCEDURAL HISTORY

On October 27, 1999 the Commission issued an Order in this case granting preliminary approval to Minnesota Cellular Corporation's application to be designated an "eligible telecommunications carrier" (ETC) under the federal Telecommunications Act of 1996¹ (the Act). The Company needed ETC status to qualify for subsidies from the federal universal service fund.²

The Order gave the Company preliminary ETC status for its proposed service area, which covered roughly the northern third of the state. Final approval was contingent upon Commission approval of a compliance filing fleshing out the details of the Company's universal service offering.

The parties to the case were as follows: Minnesota Cellular Corporation; the Minnesota Department of Commerce (the Department); the Residential and Small Business Utilities Division of the Office of the Attorney General (the RUD-OAG); U S WEST Communications, Inc.; Frontier Communications of Minnesota, Inc. (Frontier); and the Minnesota Independent Coalition, on behalf of 21 rural telephone companies providing service in Minnesota Cellular's proposed service area.

¹ Pub. L. No. 104-104, 110 Stat. 56 (to be codified as amended in scattered sections of title 47, United States Code).

² 47 U.S.C. § 214.

Four parties filed petitions for reconsideration of the October 27 Order: Minnesota Cellular, Frontier, U S WEST, and the Minnesota Independent Coalition. The petitions of the Minnesota Independent Coalition, Frontier, and U S WEST were answered by the Department and Minnesota Cellular. The petition of Minnesota Cellular was answered by the Department, the RUD-OAG, the Minnesota Independent Coalition, and U S WEST.

The Commission took up these petitions on January 4, 2000.

FINDINGS AND CONCLUSIONS

I. The Reconsideration Petitions

A. Minnesota Cellular

Minnesota Cellular sought reconsideration of two decisions:

- (1) the decision to consider affordability in evaluating both its ETC application and its universal service tariffs or price lists;
- (2) the decision requiring the Company to price at least one universal service offering at or below 110% of the current rates of the incumbents.

B. Frontier

Frontier asked the Commission to reconsider its finding that Frontier was not a "rural telephone company" under 47 U.S.C. § 153 (37).

C. Minnesota Independent Coalition

The Minnesota Independent Coalition asked the Commission to reconsider three decisions:

- (1) the decision to include the Garden Valley and Wikstrom Service areas in Minnesota Cellular's service area;
- (2) the finding that it is in the public interest to designate Minnesota Cellular an ETC in rural areas served by Coalition members;
- (3) the decision not to subject Minnesota Cellular to the same regulatory regime as land line competitive local exchange carriers.

The Coalition also requested clarification on three issues:

- (1) the number of carriers whose service areas will be served by **Minnesota Cellular**;

(2) the relationship between the Commission's decision to designate Minnesota Cellular an ETC and its belief that it has ongoing jurisdiction over the quality and affordability of Minnesota Cellular's universal service offering; and

(3) Minnesota Cellular's eligibility for universal service funding for its conventional mobile cellular service.

D. U S WEST

U S WEST asked for reconsideration of three decisions:

(1) the decision that Minnesota Cellular did not have to actually offer and advertise a universal service package (as opposed to demonstrating its ability and intention to offer and advertise a universal service package) to be designated an ETC;

(2) the decision that it was unnecessary, in light of the Commission's ability to protect the public interest by other means, to seriously consider making a finding under 47 U.S.C. § 332 (c) (3) (A) that Minnesota Cellular's services are a substitute for land line services for a substantial portion of the state

(3) the decision not to require Minnesota Cellular to offer at least one universal service package containing only subsidized services.

II. Proposals to Investigate Disaggregating Frontier's Study Area

The Department and Frontier agreed that a recent Federal Communications Commission (FCC) decision clarified that Frontier was, as it claimed, a "rural telephone company" under the Act.³ One of the special protections the Act grants rural telephone companies is to require ETCs to serve their entire study areas, unless the state commission and the FCC have agreed to redefine a specific company's service area as something other than its study area.⁴ This is sometimes called "disaggregating" a rural company's study area.

The Department and Minnesota Cellular urged the Commission to open an investigation into the merits of disaggregating Frontier's study area. They claimed that any wireless competitor would face the same technical limitations as Minnesota Cellular and that Frontier's expansive study area could be hard for any competitor, land line or wireless, to serve in its entirety.

III. Summary of Commission Action

Having reviewed the record and carefully considered the arguments of all parties, the Commission will take the following actions.

³ 47 U.S.C. § 153 (37)

⁴ 47 U.S.C. § 214 (e) (5)

The Commission will correct an error in its October 27 Order misidentifying the small carriers in whose service areas Minnesota Cellular intends to offer service.

The Commission will reconsider and reverse its finding that Frontier is not a rural telephone company and will rescind its designation of Minnesota Cellular as an ETC in areas served by Frontier

The Commission will open an investigation to explore the merits of disaggregating Frontier's study area.

The Commission will remove the requirement that Minnesota Cellular's tariffs/price lists include at least one universal service offering priced at or below 110% of the current rates of the incumbents. Instead, the Commission will examine the tariffs/price lists in the Company's compliance filing for compliance with the affordability requirement set forth in the original Order.

On all other issues the Commission will deny reconsideration and affirm its original Order. On these issues the Commission finds that the parties have not raised new arguments, pointed to new and relevant evidence, exposed errors or ambiguities in the original Order, or otherwise persuaded the Commission that it should rethink its original decisions. The Commission therefore concludes that its original decisions on these issues are the ones most consistent with the facts, the law, and the public interest.

IV. Affected Small Carriers Clarified

Minnesota Cellular originally requested ETC status in the service areas of 37 rural carriers, but later reduced that number to 22. The Order inadvertently listed the original 37.

The Commission reconsiders and clarifies that only the Minnesota exchanges of the 22 small carriers listed in MCC Exhibit 4, which is also Exhibit A of the direct testimony of Gene DeJordy, are included in Minnesota Cellular's service area.

V. Frontier's "Rural Telephone Company" Claim Upheld

The Commission agrees with the Department and Frontier that a recent Federal Communications Commission (FCC) decision makes it clear that Frontier is, as it claimed, a "rural telephone company" under the Act.⁵ One of the special protections the Act grants rural telephone companies is to require ETCs to serve their entire study areas, as opposed to smaller "service areas" within their study areas, unless the state commission and the FCC have agreed to divide a specific company's study area into smaller service areas.⁶

⁵ Tenth Report and Order, CC Docket No. 96-45 and CC Docket No. 97-160, November 2, 1999

⁶ 47 U.S.C. § 214 (e) (5).

Minnesota Cellular admits that it cannot serve Frontier's entire study area. This Commission and the FCC have not agreed to divide Frontier's study area into smaller service areas. Minnesota Cellular therefore fails the ETC test as to Frontier's service area, and the Commission rescinds its preliminary designation of the Company as an ETC in areas served by Frontier.

VI. Disaggregation Investigation Opened

The Department and Minnesota Cellular urged the Commission to open an investigation into the merits of disaggregating Frontier's study area into smaller service areas. They believed that the size, complexity, and diversity of Frontier's study area could prevent any carrier from qualifying for ETC status there, depriving consumers of the benefits of competition.

The Commission is committed to furthering competition throughout the state and will therefore open an investigation to determine whether the public interest requires the disaggregation of Frontier's study area.⁷ The Commission will delegate to the Executive Secretary the authority to set comment deadlines and other procedural time lines.

VII. Pricing Requirement Removed

In its initial Order, the Commission found that it had the authority and the duty to consider affordability in acting on Minnesota Cellular's application and that it would have the same authority and duty in acting on the universal service tariffs or price lists the Company would eventually file. Since the Company had stated in sworn testimony that it would price at least one of its universal service packages at or below 110% of incumbents' rates, and since the Commission viewed that price as clearly affordable, it incorporated the Company's promise as a requirement in its Order. That seemed to be a fair and efficient way to ensure affordability, while expediting the tariff/price list review process.

On reconsideration, however, the Company has stated that it may not literally keep its promise to price at or below 110% of incumbents' rates, in large part because it is impractical to have separate rates for the service areas of all 22 incumbents. Here the Company makes a good argument.

The Commission adopted the 110% figure not because rates *had* to be at or below that level to be affordable, but because the Company had said that rates *would* be at or below that level, which the Commission considered clearly affordable. (The Commission considered incumbents rates affordable on their face, since they had all met the "fair and reasonable" standard of the telecommunications statute.⁸)

⁷ In the Matter of an Investigation into the Merits of Disaggregating the Study Area of Frontier Communications of Minnesota, Inc., Docket No. P-405/CI-00-79.

⁸ Minn. Stat. § 237.06.

Given these facts, it made little sense for the Commission to defer judgment on whether the Company's universal service offering would be affordable – as long as the Company did what it said, the offering would be affordable. Making that clear in the initial Order was intended to expedite the Commission's (and the parties') examination of the Company's compliance filing.

Now that it is clear that this attempt to simplify compliance filing review may have raised more problems than it solved, the Commission will eliminate the requirement that at least one universal service package be priced at or below 110% of incumbents' rates. The Commission will instead exercise its authority and duty to consider affordability in acting on the tariffs/price lists in the same manner that it exercised that authority in acting on the Company's application.

VIII. Conclusion

On reconsideration, the Commission will take the following actions:

- correct an error in its list of carriers affected by Minnesota Cellular's ETC designation;
- reverse its denial of Frontier's claim to "rural telephone company" status;
- rescind its designation of Minnesota Cellular as an ETC in portions of Frontier's service area;
- open an investigation into the merits of disaggregating Frontier's study area;
- remove the requirement that Minnesota Cellular's universal service tariffs or price lists include at least one service offering priced at or below 110% of incumbents' current rates.

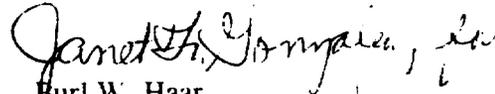
Reconsideration on all other issues is denied, and the remainder of the October 27 Order in this case is affirmed.

ORDER

1. The list of local exchange carriers on page 4 of the October 27, 1999 Order in this case is amended to include only the Minnesota exchanges of the 22 small carriers listed in MCC Exhibit 4, which is also Exhibit A of the direct testimony of Gene DeJordy.
2. The Commission finds that Frontier Communications of Minnesota, Inc. is a "rural telephone company" within the meaning of the federal Telecommunications Act of 1996.
3. The Commission rescinds its preliminary designation of Minnesota Cellular Corporation as an eligible telecommunications carrier for portions of Frontier's service area.
4. The Commission opens an investigation into the merits of disaggregating Frontier's study area and delegates to the Executive Secretary the authority to set comment periods and other procedural time lines.

5. The Commission eliminates from its October 27, 1999 Order in this case the requirement that Minnesota Cellular file at least one universal service package priced at or below 110% of incumbents' rates.
6. All other portions of the October 27, 1999 Order remain unchanged and are affirmed.
7. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION


Burl W. Haar
Executive Secretary

(S E A L)

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In the Matter of an Investigation into the
Merits of Disaggregating the Service Area of
Frontier Communications of Minnesota, Inc.

ISSUE DATE: September 1, 2000

DOCKET NO. P-405/CI-00-79

ORDER DETERMINING THAT
FRONTIER'S SERVICE AREA BE
DISAGGREGATED

PROCEDURAL HISTORY

On October 27, 1999, the Commission issued an Order¹ granting preliminary approval to Minnesota Cellular Corporation (now WWC Holding Co., Inc., hereafter Western Wireless) for designation as an "eligible telecommunications carrier" (ETC) under the Federal Telecommunications Act of 1996² (the 1996 Act). This Commission designation was requested by Western Wireless so that it would be eligible to receive federal universal service funds. The Commission granted preliminary ETC status for all of Western Wireless' proposed service area.

Further, in the October 27, 1999 Order the Commission found that it was in the public interest to designate Western Wireless an ETC in the portions of its proposed service area that were served by rural telephone companies. In this Order the Commission rejected the claim of Frontier Communications of Minnesota (Frontier) that it was a rural telephone company.

¹ ORDER GRANTING PRELIMINARY APPROVAL AND REQUIRING FURTHER FILINGS, October 27, 1999, Docket No. P-5695/M-98-1285.

² Pub.L. No. 104-104, 110 Stat. 56 (to be codified as amended in scattered sections of title 47, United States Code).

On February 10, 2000 the Commission issued an Order on Reconsideration³ finding that Frontier was a “rural telephone company” under the 1996 Act.⁴ The Commission rescinded its preliminary designation of Western Wireless as an ETC for the portions of Frontier’s service area which the company sought to serve. This rescission was necessary because Western Wireless could not serve all of the exchanges comprising Frontier’s Minnesota study area, as required for rural telephone companies.

In the February 10, 2000 Order the Commission opened an investigation into the merits of disaggregating Frontier’s service area into something less than its entire study area.

On June 13, 2000 Western Wireless filed comments with the Commission and on June 14, 2000 the Department of Commerce (DOC) and Frontier filed comments with the Commission.

Reply comments were received from the DOC on July 5, 2000, from Frontier on July 10, 2000 and from Western Wireless on July 11, 2000.

This matter came before the Commission on August 15, 2000.

FINDINGS AND CONCLUSIONS

I. The Issues in this Case

There are two issues to be addressed by the Commission in the present matter. The first issue is whether the Commission should disaggregate Frontier’s service area so that a federal ETC may serve only a portion of Frontier’s study area in Minnesota. The second issue is how or on what basis such disaggregation should be done. Whether Western Wireless, specifically, should be given federal ETC status for any of Frontier’s service areas is not an issue in this case.

II. Background and Legal Standard

In order to receive federal universal service funds a carrier must be designated an ETC. The State Commissions have responsibility for making this designation.⁵ To be designated an ETC, a common carrier must offer and advertise all of the supported services set forth in the 1996 Act⁶ throughout the service area for which it seeks designation. The 1996 Act defines the term

³ ORDER ACTING ON PETITIONS FOR RECONSIDERATION AND OPENING INVESTIGATION, February 10, 2000, Docket No. P-5695/M-98-1285.

⁴ 47 U.S.C. § 153(37).

⁵ 47 U.S.C. § 214(e)(6).

⁶ 47 C.F.R. § 54.101(a).

“service area” as a “geographic area established by a State commission for the purpose of determining universal service obligations and support mechanisms.”⁷ In those areas served by a rural telephone company, the term “service area” means a company’s “study area,” unless the State and the Federal Communications Commission (FCC) establish a different definition of the service area for a company after taking into account recommendations of the Federal-State Joint Board on Universal Service.⁸

A rural local exchange carrier’s study area is generally defined as all of the company’s existing certificated exchange areas in a given State.⁹ In the present situation, since Frontier is a rural telephone carrier under the 1996 Act, the term “study area” refers to the area covering all of Frontier’s existing exchanges in Minnesota.

The State and the FCC, however, can establish a different definition for the service area.¹⁰ The FCC identified three factors, initially recommended by the Joint Board, which should be considered by the Commission and the FCC when determining the appropriateness of disaggregating a rural telephone company’s service area. The first factor to be considered is the risk of cream skimming, i.e., a competitive ETC selectively targeting service to low-cost exchanges of the rural telephone company. Second, consideration should be given to the regulatory status given rural local exchange carriers under the 1996 Act. Finally, the Commission should consider whether any additional administrative burdens might result from the disaggregation.¹¹

After the Commission approves a redefinition of the service area of a rural telephone company either the Commission or another party can submit a petition to the FCC for the redefinition of the service area.¹² The petition must include the proposed service area definition and the State Commission’s ruling or other official statement detailing the reasons for adopting the proposed definition. The new service area definition must take into account recommendations of any Federal-State Joint Board convened to provide recommendations regarding the definition of service area.¹³

⁷ 47 U.S.C. § 214(e)(5); 47 C.F.R. § 54.207(a).

⁸ 47 U.S.C. § 214(e)(5); 47 C.F.R. § 54.207(b).

⁹ In the Matter of Federal-State Joint Board on Universal Service, First Report and Order, CC Docket 96-45, 12 FCC rcd. 8776, ¶ 172, fn. 434 (rel. May 8, 1997).

¹⁰ See footnote 8, above.

¹¹ In the Matter of Federal-State Board on Universal Service, CC Docket 96-45, 12 FCC Rcd. 87 (rel. Nov. 8, 1996)

¹² 47 CFR § 54.207(c)(1).

¹³ 47 CFR § 54.207(c)(1)(ii).

Once a petition is submitted seeking the FCC's consent, the FCC has 14 days within which to issue a public notice.¹⁴ The FCC may then choose to initiate a proceeding to consider the petition. If the FCC has not acted within 90 days after the public notice, the proposal is deemed approved and may take effect according to State procedures.¹⁵

III. Positions of the Parties

A. The DOC

1. Regarding Disaggregation of Frontier's Service Area

The DOC recommended that the Commission disaggregate Frontier's service area to define such service territory as something other than the company's entire study area. Without disaggregation, only a CLEC willing and able to serve all of Frontier's widespread exchanges would be able to be designated a federal ETC and be able to participate in any high-cost federal universal service program.

The DOC argued that it is in the public interest to define the service areas in a way that encourages competitive local exchange carriers (CLECs) to serve all or part of the Frontier territory. If Frontier's service area is not disaggregated, Frontier's customers would be denied the benefits of competition from carriers who are not able to serve the entire study area. If the service area is disaggregated, the benefits of Western Wireless' fixed wireless service and possibly service from other CLECs can be made available to customers in certain portions of Frontier's area.

The DOC in making its recommendation relied on its interpretation of applicable federal law. The DOC stated that the FCC's purpose in defining the service area of a rural incumbent local exchange carrier (ILEC) as the company's entire study area was to prevent CLECs from providing service only to low-cost areas served by the local ILEC.¹⁶

The DOC indicated that allowing Western Wireless ETC designation to serve those exchanges for which it has federal wireless authority will not be picking-off the low cost exchanges. The 29 exchanges included in Western Wireless' authorized wireless coverage area include lower-density, higher-cost exchanges. Frontier's higher-density, lower-cost exchanges in the Twin Cities metropolitan area are not in Western Wireless' coverage area.

¹⁴ Ibid at subd.(c)(2).

¹⁵ Ibid at subd.(c)(3)(ii).

¹⁶ See footnote 9, at ¶189.

The DOC also noted that the FCC addressed the concerns of wireless carriers and the difficulty of serving exchanges that are expansive and non-contiguous by encouraging state commissions to consider redefining the service areas of rural carriers to consist of only the contiguous portions of the rural ILEC study area.¹⁷

In response to Frontier's comments that there is no reason to disaggregate Frontier's service area now because Frontier receives no universal service funds, and therefore a CLEC would not be able to receive such funds, the DOC indicated that disaggregation should take place now so that Western Wireless and any other approved federal ETC could immediately take advantage of any new high-cost universal service fund program for which Frontier becomes eligible. The DOC argued that delaying disaggregation will delay the designation of federal ETC status in parts of Frontier's territory and may delay the provision of competitive local exchange service in these exchanges.

2. How Should the Service Area be Disaggregated

The DOC recommended disaggregating to the exchange level. Each Frontier exchange would be established as a separate service area for the purpose of federal ETC determination. The DOC stated that CLECs currently serve one or more of Frontier's exchanges without serving all of them. This would allow CLECs who are designated a federal ETC to receive future federal high-cost funds, if any, for those exchanges in which they serve.

The DOC indicated that another approach to disaggregation could be to split off those exchanges that are within the authorized wireless service area of Western Wireless. The DOC argued, however, that such an approach was too specific to one provider and does not provide for the future when other CLECs may wish to get ETC status for a portion of Frontier's territory.

3. Comments on the Issues Raised by the Joint Board

The DOC argued that none of the concerns raised by the Joint Board should deter the Commission from approving the disaggregation of the service area from the study area to the individual exchange area. The first concern raised was the concern that a competitive ETC would selectively target service to only the lowest cost exchanges of the rural LEC's study area but would receive federal universal service payments based on the higher study area average cost. The DOC indicated that such a concern is not applicable because Frontier receives no federal high cost universal service support.

The second concern of the Joint Board was that the special status of rural telephone companies conferred by the 1996 Act be recognized. The disaggregation of Frontier's service area from the study area to the individual exchange does not change the careful consideration the Commission must give to any application by a CLEC for federal ETC status in one or more Frontier exchange.

¹⁷ Ibid.

The final concern of the Joint Board was whether there would be additional administrative burdens due to the disaggregation. Because Frontier receives no high-cost support in Minnesota, this is not an issue at this time.

B. Western Wireless

1. Regarding Disaggregation of Frontier's Service Area

Western Wireless requested that the Commission disaggregate Frontier's service area for purposes of ETC designation. Western Wireless noted that Frontier is certificated to provide service in 45 scattered exchanges throughout Minnesota. Western Wireless is licensed and provides the FCC's supported services in 29 of the Frontier exchanges. Western Wireless, however, is precluded from being designated as an ETC in any of the Frontier exchanges because Western Wireless cannot serve them all.

Western Wireless argued that the disaggregation of Frontier's service area is necessary to promote competition and advance universal service. It argued that disaggregation is in the public interest because it will allow Western Wireless to bring new services and technologies to customers of Frontier, who now have no choice of providers. Frontier's wide-ranging study area poses an impenetrable barrier not only to Western Wireless but to any other competitive carrier, especially cellular carriers seeking ETC status. Because competitor and incumbent service territories are geographically different, it would be nearly impossible for any other competitive carrier to compete with Frontier.

2. How Should the Service Area be Disaggregated

Western Wireless supports the position and recommendation of the DOC that Frontier's service area be disaggregated on an exchange by exchange basis. The company claims that disaggregation on an individual exchange basis will preserve and advance universal service by establishing designated service areas that are more reflective of areas actually served. Western Wireless also believes that smaller service areas based on individual Frontier exchanges will be more accessible to new ETC providers and thus further the universal service goals and competition.

3. Comments on the Issues raised by the Joint Board

Regarding the issue of cream-skimming, Western Wireless indicated the risk of cream-skimming is not present. Western Wireless asserted that it seeks disaggregation so that it can be designated an ETC in those areas in which it is licensed and has the ability to provide facilities-based services. Included in these areas are areas of lower density and higher costs; excluded are the more urban areas which presumably represent areas of higher density and lower costs. Further, smaller service areas will be more accessible to new ETC providers thereby furthering competition.

The Company mentioned that the disaggregation of Frontier's service area on an individual exchange basis will not compromise or impair Frontier's unique treatment as a rural telephone company under the 1996 Act. Frontier retains statutory exemptions from interconnection, unbundling and resale requirements¹⁸ even if its service area is disaggregated for purposes of ETC designations. Further, the 1996 Act requires that the public interest be a factor when considering the designation of ETC's in Frontier's service area.¹⁹ This public interest factor remains as an effective check to prevent the designation of an ETC which may seek to target only low cost areas. These factors indicate that Frontier's status as a rural telephone company will not impair Frontier's treatment as a rural telephone company.

Western Wireless argued that because Frontier receives no high-cost support from the federal Universal Service Fund, the third factor identified by the Joint Board, the question of additional administrative burdens, is not an issue.

C. Frontier's Comments

1. Regarding Disaggregation of Frontier's Service Area

Frontier stated that it does not receive any federal universal service funding, notwithstanding the fact that it is a "rural telephone company." A rural telephone company may receive funding for three cost components if it meets eligibility requirements; however Frontier does not meet these requirements. Since an ETC's federal universal support is based on the federal universal support that the incumbent LEC receives for serving the same area,²⁰ Western Wireless cannot receive any federal universal support for serving any Frontier area in Minnesota. Because of this, Frontier argues that the present proceeding on disaggregation of Frontier's service area serves no practical purpose. Frontier also questions how the public interest could benefit from the proposed disaggregation when there is no financial benefit to Western Wireless as a competitor.

Frontier also argued that the Commission's authority extends only to the disaggregation of service areas, not study areas, and requests that to the extent the Commission considers disaggregation, it should consider disaggregation of "service areas," not Frontier's "study area." Frontier argued that neither the 1996 Act nor the rules authorizes disaggregation of "study areas" but there are provisions for disaggregating "service areas".

Frontier also indicated concern that there could be a significant potential for unknown administrative costs if Frontier's service area is disaggregated.

¹⁸ 47 U.S.C. § 251(c).

¹⁹ 47 U.S.C. 214(e)(2).

²⁰ 47 C.F.R. § 307.

2. How Should the Service Area be Disaggregated

Frontier recommends that any disaggregation should be based on contiguous areas. Frontier argued that the 29 exchanges Western Wireless has the authority to serve are functionally contiguous and if there is disaggregation it should be based on these areas.

Frontier stated that the proposed disaggregation on the exchange level is far more extensive than Western Wireless needs to provide service and includes 16 exchanges that are outside of Western Wireless' service area. It argued that with disaggregation on the exchange level nothing would prevent another carrier coming in and providing ETC service only to Frontier's low-cost individual exchanges. Until the Commission knows whether Frontier will receive any universal service support and how such support would be determined and distributed, Frontier argued that it is premature to impose disaggregation on an individual exchange basis.

IV. Commission Action

The Commission agrees with the DOC in recognizing that the goals of increasing competition, customer choice, new technologies and innovative services would be served if CLECs could serve all or part of Frontier's territory. The Commission recognizes that Frontier currently receives no federal high-cost subsidies and that CLECs would currently be able to receive only the same high-cost subsidies that Frontier is eligible to receive. However, the Commission believes that disaggregating at this time is appropriate to avoid delays in the ability of CLECs to receive any high-cost universal funding for which Frontier may become eligible.

Delaying disaggregation will delay the designation of federal ETC status for parts of the Frontier territory and may delay competitive local exchange services in those exchanges. Without disaggregation only a CLEC willing and able to serve the entire Frontier study area will be eligible to be designated a federal ETC and be eligible for any federal high-cost subsidies that become available. Further, delaying disaggregation causes uncertainty about the ability to receive any universal service funds in the future and may delay or discourage CLECs from providing service at all in Frontier's service area.

The Commission also agrees that the Frontier service area should be disaggregated on an exchange by exchange basis as this would allow CLECs which are designated a federal ETC to receive future federal high-cost funds, if any, for those exchanges in which they serve. Frontier is currently a multi-exchange rural telephone company. Frontier's current Minnesota study area is comprised of 45 separate exchanges located in the Southwestern, South Central and the Twin Cities areas of the state. The most logical way to disaggregate is by individual exchange areas. Redefining Frontier's service area into 45 separate service areas based on individual exchanges for ETC designation will promote competition by eliminating a barrier to entry into the universal services market.

In reaching its conclusions on redefining the service area of Frontier, a rural local exchange carrier, the Commission considered the concerns cited by the Federal-State Joint Board. The Commission concludes that the concerns raised by the Joint Board do not preclude the disaggregation of Frontier's service area from the study area to the individual exchange area.

The Commission recognizes that the cream skimming issue, when a CLEC chooses to provide service in a low-cost exchange but may receive federal universal service payments based on the higher study area average cost, does not apply to Frontier at this time because Frontier currently receives no federal high-cost universal support. For the same reason, the issue of increased administrative expenses to Frontier does not apply at this time.

The Commission also considered the concern of the Joint Board that the special status of a rural telephone company that is conferred by the 1996 Act be recognized. The Commission has expressly determined that Frontier is a rural telephone company under the 1996 Act. This determination entitles Frontier to special status under the Act²¹ and the statutory exemptions granted under this provision, exemptions from interconnection, unbundling and resale requirements, will remain in effect even if Frontier's service area is disaggregated. Further, the disaggregation of Frontier's service area from the study area to the individual exchange does not reduce the careful consideration, including a determination of public interest, that the Commission must give to any application by a CLEC for ETC status in Frontier's service area.

The Commission is in agreement that the Commission has authority to change the "service area" not the "study area" of a rural telephone company and will change the caption of this proceeding, which inadvertently used the term "study area."

For all of these reasons, the Commission will authorize the Executive Secretary to file a petition with the FCC to disaggregate Frontier's service area on an individual exchange basis for ETC purposes.

Western Wireless, in its earlier petition for designation as a ETC, indicated its intention to be designated an ETC in certain exchanges in Frontier's service area. For this reason, the Commission will direct Western Wireless to request the addition of the Frontier exchanges to the area for which it has received designation as an ETC.

ORDER

1. The Commission determines that Frontier's service area be disaggregated on an individual exchange basis for ETC purposes.

²¹ 47 U.S.C. § 251(f).

2. The Commission's authorizes the Executive Secretary to file an application with the FCC requesting consent to its proposed alternative service area definition for Frontier's Minnesota service territory.
3. The caption in this docket P-405/CI-00-79 is hereby changed from referring to Frontier's "study area" to Frontier's "service area."
4. Western Wireless shall file a petition with the Commission to request addition of the Frontier exchanges to the area for which it has received designation as a federal ETC.
5. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Mark E. Oberlander for

Burl W. Haar
Executive Secretary

(S E A L)

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